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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

**OBJECTION TO APPLICATION FOR PROFESSIONAL FEES OF LOCAL COUNSEL
FOR OVERSECURED CREDITOR**

Acting United States Trustee Robert D. Miller Jr., through his undersigned attorney, Daniel P. McKay, hereby objects to The Application for Professional Fees of Local Counsel for Oversecured Creditor (hereinafter “Application”) filed by Holland & Hart, LLP, local counsel for creditor Credit Suisse. This objection is made upon the following grounds:

1. The Application states, at paragraph 3, that it is being made pursuant to the Interim Order entered by this Court on November 13, 2008. Under that Order the Debtors-In-Possession became obligated to pay certain fees of Credit Suisse out of the proceeds of the post-petition loan from Credit Suisse to the Debtors. The operative terms of the Debtors' obligations are spelled out in the "DIP Term Sheet" incorporated in the Interim Order. First, the DIP Term Sheet defines the "DIP Facility" as "[a] superpriority debtor-in-possession term loan facility in an aggregate principal amount of up to \$4,450,000 (the "**DIP Facility**")". Then, under a section

1 headed “Purpose” the DIP Term Sheet states in part “[t]he loans under the DIP Facility will be
 2 used to pay (iii) fees, costs and expenses **relating to the DIP Facility**, including those of
 3 Agent and Lenders and their counsel and financial advisor...” (emphasis added). Therefore, it
 4 appears clear that the Debtors’ obligations to pay the fees of Credit Suisse’s attorneys is limited
 5 to fees incurred in connection with the \$4,450,000 loan approved in the Interim Order and does
 6 not extend to any additional proposed financing.

7 2. The fees sought in the Application include fees for services that are outside of the
 8 scope of those provided for in the Interim Order and the DIP Term Sheet. The Interim Order was
 9 entered on November 13, 2008. The majority of the entries in the itemization attached to the
 10 Application are for services performed after November 13th. Most of those entries appear to be
 11 for work performed in negotiating and preparing documents for an additional loan from Credit
 12 Suisse to the Debtors. Needless to say, that subsequent loan was not the subject of a motion for
 13 approval.

14 3. The only objection to final approval of the \$4,450,000 loan that was the subject of the
 15 Interim Order was filed by the Ad Hoc Committee of Yellowstone Club Members. There is one
 16 reference to the Committee’s objection in the itemization attached to the Application in the entry
 17 for 11/21/08 which states simply “review objection of ad hoc committee”. That entry is lumped
 18 in with other activities. Other than that one reference, it appears that Holland & Hart’s activities
 19 after November 13th were in connection with an additional DIP financing proposal that never
 20 came to fruition. If any significant amount of time was spent dealing with the Committee
 21 objection, it cannot be discerned from a review of the Applicant. The burden of proof is on the
 22 applicant to provide sufficient detail to show that any fees incurred in connection with the
 23 objection are reasonable and necessary.

24 4. If Credit Suisse indeed is an oversecured creditor with regard to its prepetition secured
 25 claims, some of the fees to which this objection is directed legitimately may be a part of its claim
 26 pursuant to 11 U.S.C. § 506(b). However, that issue is not before the Court in connection with

1 the Application. The Application explicitly states that it is filed pursuant to the Interim Order
2 "for the fees associated with DIP financing negotiation, documentation, approval and
3 administration." The DIP Term Sheet limits those fees to fees incurred in connection with the
4 initial \$4,450,000 loan. To the extent that the fees requested by Holland & Hart, LLP are outside
5 the scope of that limitation, the Application must be denied.

6 WHEREFORE, the United States Trustee objects to the Application for Professional Fees
7 of Local Counsel for Oversecured Creditor filed by Holland & Hart, LLP.

8 DATED this 5th day of January, 2009.

9 Respectfully Submitted
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11 ROBERT D. MILLER JR.
12 Acting United States Trustee
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14 /s/ Daniel P. McKay
15 DANIEL P. MCKAY
16 Attorney for United States Trustee
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